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The Newhall Land and Farming Company
7

8 **UNITED STATES DISTRICT COURT**

9 **SOUTHERN DISTRICT OF CALIFORNIA**

10	CENTER FOR BIOLOGICAL DIVERSITY,)	Case No. 07-CV-2380 (JM AJB)
11)	
12	Plaintiff,)	THE NEWHALL LAND AND
13	v.)	FARMING COMPANY'S ANSWER
14	UNITED STATES FISH AND WILDLIFE)	TO PLAINTIFF'S COMPLAINT FOR
15	SERVICE and DIRK KEMPTHORNE,)	INJUNCTIVE AND DECLARATORY
16	Secretary of the Interior)	RELIEF
17)	Assignment:
18	THE NEWHALL LAND AND FARMING)	The Honorable Jeffrey T. Miller
19	COMPANY,)	
20	Real Party in Interest.)	Date: April 25, 2008
21)	Time: 1:30 p.m.
22		Place: Courtroom 16
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1 In answer to Plaintiffs' Complaint for Injunctive and Declaratory Relief ("Complaint"), The
2 Newhall Land and Farming Company ("Newhall") hereby admits, denies, and alleges as follows:

3 INTRODUCTION

4 1. To the extent that the allegations characterize the Federal Register notices at 59
5 Fed. Reg. 64,859 (December 16, 1994), 65 Fed. Reg. 36,512 (June 8, 2000), 66 Fed. Reg. 9,414
6 (February 7, 2001), 69 Fed. Reg. 23,254 (April 28, 2004), and 70 Fed. Reg. 19,562 (April 13,
7 2005), these notices speak for themselves and provide the best evidence of their content and
8 meaning. Any allegations contrary to the notices' plain language and meaning are denied. The
9 remainder of the allegations contained in Paragraph 1 consists of plaintiffs' factual or legal
10 conclusions, which require no response. To the extent a response is required, the allegations are
11 denied.
12

13 2. The allegations contained in Paragraph 2 consist of plaintiffs' characterization of a
14 July 20, 2007 press release and a November 23, 2007 letter from the U.S. Fish and Wildlife
15 Service ("FWS"), both of which speak for themselves. To the extent a response is required to the
16 allegations in paragraph 2, Newhall is without information or knowledge sufficient to form a basis
17 as to the truth of the allegations, and on that basis, denies the allegations.
18

19 JURISDICTION AND VENUE

20 3. The allegations in Paragraph 3 consist of legal conclusions, to which no response is
21 required. To the extent a response is required, the allegations in paragraph 3 are denied.
22

23 4. The allegations in Paragraph 4 consist of legal conclusions, to which no response is
24 required. To the extent a response is required, the allegations in paragraph 4 are denied.

25 5. Newhall is without information or knowledge sufficient to form a basis as to the
26 truth of the allegations, and on that basis, denies the allegations set forth in paragraph 5.
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1 its content and meaning. With respect to the remaining allegations in paragraph 11, Newhall is
2 without information or knowledge sufficient to form a basis as to the truth of the allegations, and
3 on that basis, denies these allegations.

4 12. To the extent that the allegations in paragraph 12 characterize the Recovery Plan
5 issued by FWS on July 24, 1999, this document speaks for itself and provides the best evidence of
6 its content and meaning. With respect to the remaining allegations in paragraph 12, Newhall is
7 without information or knowledge sufficient to form a basis as to the truth of the allegations, and
8 on that basis, denies these allegations.

9
10 13 To the extent that the allegations in paragraph 13 characterizes the Endangered
11 Species Act, 16 U.S.C. §§1531-1599, the statute speaks for itself and provides the best evidence of
12 its content and meaning. To the extent that the allegations in paragraph 13 characterize 65 Fed.
13 Reg. 36512-36548, this document speaks for itself and provides the best evidence of its content
14 and meaning. With respect to the remaining allegations in paragraph 13, Newhall is without
15 information or knowledge sufficient to form a basis as to the truth of the allegations, and on that
16 basis, denies these allegations.

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18 14. To the extent that the allegations in paragraph 14 characterize 66 Fed. Reg. 9414-
19 9474, this document speaks for itself and provides the best evidence of its content and meaning.
20 To the extent that the allegations in paragraph 14 characterize the opinion in *Building Industry*
21 *Legal Defense Foundation et al. v. Norton*, 231 F.Supp. 2d 100 (D.D.C. 2002), this opinion speaks
22 for itself and provides the best evidence of its content and meaning. With respect to the remaining
23 allegations in paragraph 14, Newhall is without information or knowledge sufficient to form a
24 basis as to the truth of the allegations, and on that basis, denies these allegations.

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26 15. To the extent that the allegations in paragraph 15 characterize the notice or
27 recovery plans set forth in 69 Fed. Reg. 23254-23288, this document speaks for itself and provides
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1 the best evidence of its content and meaning. With respect to the remaining allegations in
2 paragraph 15, Newhall is without information or knowledge sufficient to form a basis as to the
3 truth of the allegations, and on that basis, denies these allegations.

4 16. To the extent that the allegations in paragraph 16 characterize orders made in
5 *Building Industry Legal Defense Foundation et al. v. Norton*, 231 F.Supp. 2d 100 (D.D.C. 2002),
6 these documents speak for themselves and provide the best evidence of their content and meaning.
7 To the extent that the allegations in paragraph 16 characterize 70 Fed. Reg. 7459-7467 (February
8 14, 2005) and 70 Fed. Reg. 19562-19581, these documents speak for themselves and provide the
9 best evidence of their content and meaning. With respect to the remaining allegations in
10 paragraph 16, Newhall is without information or knowledge sufficient to form a basis as to the
11 truth of the allegations, and on that basis, denies these allegations.
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13 17. To the extent that the allegations in paragraph 17 characterize 70 Fed. Reg. 19562-
14 19581 (April 13, 2005), this document speaks for itself and provides the best evidence of its
15 content and meaning. With respect to the remaining allegations in paragraph 17, Newhall is
16 without information or knowledge sufficient to form a basis as to the truth of the allegations, and
17 on that basis, denies these allegations.
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19 18. To the extent that the allegations in paragraph 18 characterize 70 Fed. Reg. 19562-
20 19581 (April 13, 2005), this document speaks for itself and provides the best evidence of its
21 content and meaning. With respect to the remaining allegations in paragraph 18, Newhall is
22 without information or knowledge sufficient to form a basis as to the truth of the allegations, and
23 on that basis, denies these allegations.
24

25 19. To the extent that the allegations in paragraph 19 characterize 70 Fed. Reg. 19562-
26 19581 (April 13, 2005), this document speaks for itself and provides the best evidence of its
27 content and meaning. To the extent that the allegations in paragraph 19 characterize the
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1 Endangered Species Act, 16 U.S.C. §§1531-1599, the statute speaks for itself and provides the
2 best evidence of its content and meaning. The last sentence of the paragraph consists of legal
3 conclusions, to which no response is required. With respect to any remaining allegations in
4 paragraph 19, Newhall is without information or knowledge sufficient to form a basis as to the
5 truth of the allegations, and on that basis, denies these allegations.
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7 20. The allegations in the first sentence of paragraph 20 consist of legal conclusions, to
8 which no response is required. To the extent that the allegations in paragraph 20 characterize the
9 Federal Register notices at 69 Fed. Reg. 23,254 (April 28, 2004), 70 Fed. Reg. 7,459 (February 14,
10 2005), and 70 Fed. Reg. 19562 (April 13, 2005), these documents speak for themselves and
11 provide the best evidence of their contents and meaning. With respect to any remaining
12 allegations in paragraph 20, Newhall is without information or knowledge sufficient to form a
13 basis as to the truth of the allegations, and on that basis, denies these allegations.
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15 21. To the extent that the allegations in paragraph 21 characterize the Federal Register
16 notices at 70 Fed. Reg. 7,459 (February 14, 2005) and 70 Fed. Reg. 19562 (April 13, 2005), these
17 documents speak for themselves and provide the best evidence of their contents and meaning. To
18 the extent that the allegations in paragraph 21 characterizes the Endangered Species Act, 16
19 U.S.C. §§1531-1599, the statute speaks for itself and provides the best evidence of its content and
20 meaning. To the extent that the allegations in paragraph 21 characterizes the Administrative
21 Procedures Act, 5 U.S.C. §500 *et seq.*, the statute speaks for itself and provides the best evidence
22 of its content and meaning. With respect to any remaining allegations in paragraph 21, Newhall is
23 without information or knowledge sufficient to form a basis as to the truth of the allegations, and
24 on that basis, denies these allegations.
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26 22. The allegations in Paragraph 22 consist of legal conclusions, to which no response
27 is required. To the extent a response is required, the allegations in paragraph 22 are denied.
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1 23. The allegations in Paragraph 23 consist of legal conclusions, to which no response
2 is required. To the extent a response is required, the allegations in paragraph 23 are denied.

3 24. To the extent that the allegations in paragraph 24 characterize the Endangered
4 Species Act, 16 U.S.C. §§1531-1599, the statute speaks for itself and provides the best evidence of
5 its content and meaning. The remainder of the allegations in Paragraph 24 consist of legal
6 conclusions, to which no response is required. To the extent a response is required, the allegations
7 in paragraph 24 are denied.

9 25. To the extent that the allegations in paragraph 25 characterize the opinion in
10 *Gifford Pinchot Task Force v. U.S. Fish & Wildlife Service*, 378 F.3d. 1059 (9th Cir. 2004), the
11 decision speaks for itself and provides the best evidence of its content and meaning. To the extent
12 that the allegations in paragraph 25 characterize 50 C.F.R. § 402.02 and 70 Fed. Reg.19562 (April
13 13, 2005), these documents speak for themselves and provide the best evidence of their contents
14 and meaning. To the extent that the allegations in paragraph 25 characterize the Endangered
15 Species Act, 16 U.S.C. §§1531-1599, the statute speaks for itself and provides the best evidence of
16 its content and meaning. The remainder of the allegations in Paragraph 25 consists of legal
17 conclusions, to which no response is required. To the extent a response is required, the allegations
18 in paragraph 25 are denied.

20 26. To the extent that the allegations in paragraph 26 characterize 70 Fed. Reg.19562
21 (April 13, 2005) and its related economic analysis, these documents speak for themselves and
22 provide the best evidence of their contents and meaning. The remainder of the allegations in
23 Paragraph 26 consists of legal conclusions, to which no response is required.

25 27. To the extent that the allegations in paragraph 27 characterize 70 Fed. Reg.19562
26 (April 13, 2005) and its related economic analysis, these documents speak for themselves and
27

1 provide the best evidence of their contents and meaning. The remainder of the allegations in
2 Paragraph 27 consists of legal conclusions, to which no response is required.

3 28. To the extent that the allegations in paragraph 28 characterize 69 Fed. Reg. 23,254
4 (April 28, 2004) and 70 Fed. Reg.19562 (April 13, 2005) and its related economic analysis, these
5 documents speak for themselves and provide the best evidence of their contents and meaning. The
6 remainder of the allegations in Paragraph 28 consists of legal conclusions, to which no response is
7 required.
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9 29. To the extent that the allegations in paragraph 29 characterize a letter to Nick J.
10 Rahall, II, this document speaks for itself and provides the best evidence of its contents and
11 meaning. The remainder of the allegations in Paragraph 29 consists of legal conclusions, to which
12 no response is required. To the extent that the remaining allegations in paragraph 29 require a
13 response, Newhall is without information or knowledge sufficient to form a basis as to the truth of
14 the allegations, and on that basis, denies these allegations.
15

16 CLAIM OF RELIEF

17 30. Newhall's responses to the allegations in paragraphs 1 through 29 are incorporated
18 herein by reference.

19 31. To the extent that the allegations in paragraph 31 characterize 70 Fed. Reg.19562
20 (April 13, 2005), this documents speak for itself and provides the best evidence of its contents and
21 meaning. To the extent that the allegations in paragraph 31 characterize the Endangered Species
22 Act, 16 U.S.C. §§1531-1599, the statute speaks for itself and provides the best evidence of its
23 content and meaning. The remainder of the allegations in Paragraph 31 consists of legal
24 conclusions, to which no response is required. To the extent a response is required, Newhall is
25 without information or knowledge sufficient to form a basis as to the truth of the allegations, and
26 on that basis, denies the allegations in paragraph 31.
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1 32. To the extent that the allegations in paragraph 32 characterize 69 Fed. Reg. 23,254
2 (April 28, 2004) and 70 Fed. Reg.19562 (April 13, 2005), these documents speak for themselves
3 and provide the best evidence of their contents and meaning. To the extent that the allegations in
4 paragraph 32 characterize the Endangered Species Act, 16 U.S.C. §§1531-1599, the statute speaks
5 for itself and provides the best evidence of its content and meaning. The remainder of the
6 allegations in Paragraph 32 consists of legal conclusions, to which no response is required. To the
7 extent a response is required, Newhall is without information or knowledge sufficient to form a
8 basis as to the truth of the allegations, and on that basis, denies the allegations in paragraph 32.
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10 33. The allegations in paragraph 33 are legal conclusions which require no response.
11 To the extent a response is required, Newhall is without information or knowledge sufficient to
12 form a basis as to the truth of the allegations, and on that basis, denies the allegations in paragraph
13 33.
14

15 **REQUEST FOR RELIEF**

16 The remaining allegations in plaintiff's Complaint contain a prayer for relief, and thus no
17 response is required. To the extent a further response may be required, Newhall denies that
18 plaintiff is entitled to the relief requested in its Complaint or to any relief whatsoever.
19

20 **GENERAL DENIAL**

21 Newhall denies each and every allegation of the Complaint not otherwise expressly
22 admitted, qualified or denied.

23 **AFFIRMATIVE DEFENSES**

24 **First Affirmative Defense**

25 To the extent the plaintiff's complaint fails to state a claim on which relief can be granted,
26 it should be dismissed.
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1 **Second Affirmative Defense**

2 To the extent that some or all of the plaintiff's claims are barred by the doctrines of res
3 judicata and/or collateral estoppel, those claims should be dismissed.

4 **Third Affirmative Defense**

5 To the extent that this Court lacks subject matter jurisdiction over some or all of the issues
6 presented in this action, those issues should be dismissed.

7 **Fourth Affirmative Defense**

8 To the extent plaintiff has failed to exhaust administrative remedies with respect to any
9 claim, that claim should be dismissed.

10 **Fifth Affirmative Defense**

11 To the extent plaintiff lacks standing with respect to any claim, that claim should be
12 dismissed.

13 **Sixth Affirmative Defense**

14 To the extent that any claim is not ripe for adjudication, that claim should be dismissed.

15 **Seventh Affirmative Defense**

16 To the extent plaintiff seeks relief that affects the interest of unnamed parties, those parties
17 are indispensable and no action may be maintained against them in their absence.

18 **REQUEST FOR RELIEF**

19 **WHEREFORE**, Newhall respectfully requests that this Court:

20 1. Dismiss the action, *with prejudice*, with all parties to bear their own costs and
21 attorneys' fees; and

22 ///

23 ///

24 ///

2. Grant such other and additional relief as this Court deems appropriate.

March 19, 2008

Respectfully submitted,

David P Hubbard
Mark J. Dillon
Rachel C. Cook
Gatzke Dillon & Ballance LLP

Attorney for Applicant for Intervention, The Newhall
Land and Farming Company

By: /s/ David P. Hubbard
David P. Hubbard